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Sent via FOIAonline.gov

April 10, 2023

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act (FOIA) Request for Records Regarding Pollutant Discharges and Water Quality at Naval Base Kitsap-Bangor (NBK-Bangor)

Dear FOIA Officer:

This request is made pursuant to the Freedom of Information Act, 5 U.S.C. § 552 on behalf of the Port Gamble S'Klallam Tribe (PGST or Tribe).

Please produce records, created or received between January 1, 2018 and the present, in the possession, custody, or control of the Environmental Protection Agency ("EPA"), including EPA Region 10, that relate in whole or in part to:

- Unpermitted discharges, spills, releases, leaks, flows, or any other additions by any person of domestic waste water, untreated sewage, sanitary wastes, gray water, detergents, solvents, paint, pesticides, antifreeze, battery acid, bilge water, ballast water, hydroblast or pressure wash wastewater, industrial waste water, petroleum, oil, diesel, gasoline, motor oil, lubricants, grease, hydraulic fluid, hydraulic oil, oil, oily waste, floating solids, sludge, heat, or any other pollutants to Hood Canal (or other waters that enter Puget Sound) at or from U.S. Naval Base Kitsap-Bangor, including from activities occurring in adjacent marine waters.¹

"Records" includes but is not limited to notices; reports (e.g., inspection reports, illicit discharge reports, incident reports, noncompliance notices or reports, water quality reports); citizen complaints; documents reflecting oral or written notices of NPDES or other permit noncompliance reporting submitted by the Navy; documents in compliance files; written communications (e.g., emails, texts, letters, memoranda) between the U.S. Environmental Protection Agency (EPA) and the U.S. Navy, Washington State Department of Ecology, Washington State Department of Health, or Kitsap Public Health District; internal EPA

¹ "Navy" and "Naval" includes the U.S. Department of Defense and/or the Department of the Navy and its agents.

communications (e.g., emails, texts, letters, memoranda); data; analyses; spreadsheets; photographs; videos; maps; diagrams; and notes.

Please also produce:

- A copy of each NPDES permit that currently permits discharges at or from Naval Base Kitsap-Bangor, including but not limited to WAS026636, WAR05F004, WA0025577, and WAP007363.²
- With respect to each such permit, a copy of each plan developed by the Navy in order to comply with terms and conditions of each of these NPDES permits (e.g., Best Management Practices plans, Stormwater Management Plans, Stormwater Pollution Prevention Plans, Illicit Discharge Detection and Elimination Plans (IDDE), monitoring plans); all Discharge Monitoring Reports (DMRs) submitted by the Navy to EPA under any of these permits from January 1, 2018 to present; all notices and reports of exceedances of permit limits or noncompliance with permit requirements for each of these NPDES permits from January 1, 2018 to present; and all informal or formal enforcement evaluations, reviews, and notices.
- All IDDE program reviews and IDDE studies related to any IDDE plan produced in response to the preceding bullet point.
- All stormwater monitoring reports, analyses, results, summaries, and data at, from, or related to Naval Base Kitsap-Bangor.

Please note that we are happy to discuss appropriate search terms and other ways to ensure efficient resolution of this request.

We request that these materials be supplied in searchable electronic form and formatted for a commercially-available software program, to the extent that it is reasonably possible to produce the information in that form or format. Please share the records on a file-sharing website (e.g., Dropbox) with: Jane Steadman, Kanji & Katzen, P.L.L.C., who you may contact at jsteadman@kanjikatzen.com to provide the information necessary to access the documents.

If you determine that portions of any records covered by this request are exempt from disclosure, please redact the exempt portions while leaving intact and providing all nonexempt portions of the record. For any records withheld in their entirety, please provide an index with descriptions of each record withheld with sufficient information for the Port Gamble S'Klallam Tribe to make an informed decision as to its appeal rights as to each document. Likewise, for any records that are partially redacted, please preserve enough information in the document sufficient for the Tribe to make an informed decision as to its appeal rights as to each redaction. For all records withheld or redacted, please provide a particularized description of the legal basis for withholding or redacting those documents. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973).

² U.S. Naval Base Kitsap-Bangor includes the facilities with FRS ID 110064207727, FRS ID 110070917490, and any other IDs associated with Naval Base Kitsap-Bangor, including but not limited to facilities referred to as USNAV SUBMARINE BASE BANGOR and NAVAL BASE KITSAP AT BANGOR.

The Port Gamble S’Klallam Tribe requests a fee waiver for this request, which is made for a non-commercial purpose. The “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1); 5 U.S.C. § 552(a)(4)(A)(iii). EPA’s regulations at 40 C.F.R. § 2.107(l)(2) set forth four factors FOIA officers should consider in determining whether to grant a fee waiver for documents contributing to the public understanding of government operations or activities. The Port Gamble S’Klallam Tribe satisfies all four factors.

Regarding Factor 1, the records covered pursuant to this agreement concern the “operations or activities” of the Navy, a department of the Federal government. 40 C.F.R. § 2.107(l)(2)(i). This request seeks information regarding the Navy’s discharge of pollutants at NBK-Bangor and the impact of these Federal government activities on the environment and treaty protected natural resources. Regarding Factors 2 and 4, *id.* § 2.107(l)(2)(ii), (iv), the disclosure is of informative value and is likely to contribute significantly to increased public understanding of the Navy’s operations or activities. The requested records will likely provide insight into the extent of unpermitted pollutant discharges, the impact of those discharges on the environment (including water quality), the causes of unpermitted discharges at these facilities, and steps taken to address the pollutant discharges at these facilities. Regarding Factor 3, *id.* § 2.107(l)(2)(iii), the requested documents are likely to contribute to the public understanding of a reasonably broad audience of persons interested in the subject matter. The Tribe has extensive expertise in the subject area, and its staff has many years of experience directly related to environmental regulation in Puget Sound and efforts to improve water quality. The Tribe consistently obtains information about the Navy’s projects in and around the Puget Sound and other water bodies, and consistently uses its capacities to analyze and share the information in an easily understandable format for its members and the public.³ It is very likely that a reasonably broad audience will be interested in the Navy’s discharge of pollutants at NBK-Bangor because the public wants to know whether the waters where they live, recreate, and fish are clean, what contributes to water quality impairment, and whether Federal agencies have complied with federal environmental and procedural laws and regulations. The request for records is narrowly tailored, targeting specific, identified records related to the Federal operations and activities described.

FOIA is to be liberally construed in favor of those requesting fee waivers, and the Port Gamble S’Klallam Tribe fully expects such a waiver will be granted. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C.C. 2003) (indicating FOIA should be “liberally construed in favor of waivers for noncommercial requesters” (internal quotations and citations omitted)); *Inst. for Wildlife Prot. v. U.S. Fish & Wildlife Serv.*, 290 F. Supp. 2d 1226, 1232 (D. Or. 2003) (requiring “*minimal showing* of their legitimate intention to use the requested information in a way that contributes to public understanding of the operations of government agencies” in order to obtain a fee waiver (emphasis added)). However, should a fee waiver not be granted and

³ The Port Gamble S’Klallam Tribe has no commercial interest that would be furthered by the requested records. The Tribe is a sovereign nation requesting this information on behalf of its members and the public and does not seek this information for a use or purpose that furthers its commercial or financial interests.

should you estimate that the fees will exceed \$200, please contact Jane Steadman at the email address listed above prior to incurring those fees.

As you are aware, FOIA requires you to respond with a determination within 20 working days from receipt of this request, 5 U.S.C. § 552(a)(6)(A)(i), and we look forward to your response within this time period and the prompt release of documents thereafter, *id.* § 552(a)(3)(A), (a)(6)(C)(i).⁴

If you have any questions, need clarification, or would like to discuss prioritization of information that can be mutually agreed upon, please feel free to contact us. Thank you very much for your prompt attention to this matter.

Sincerely,

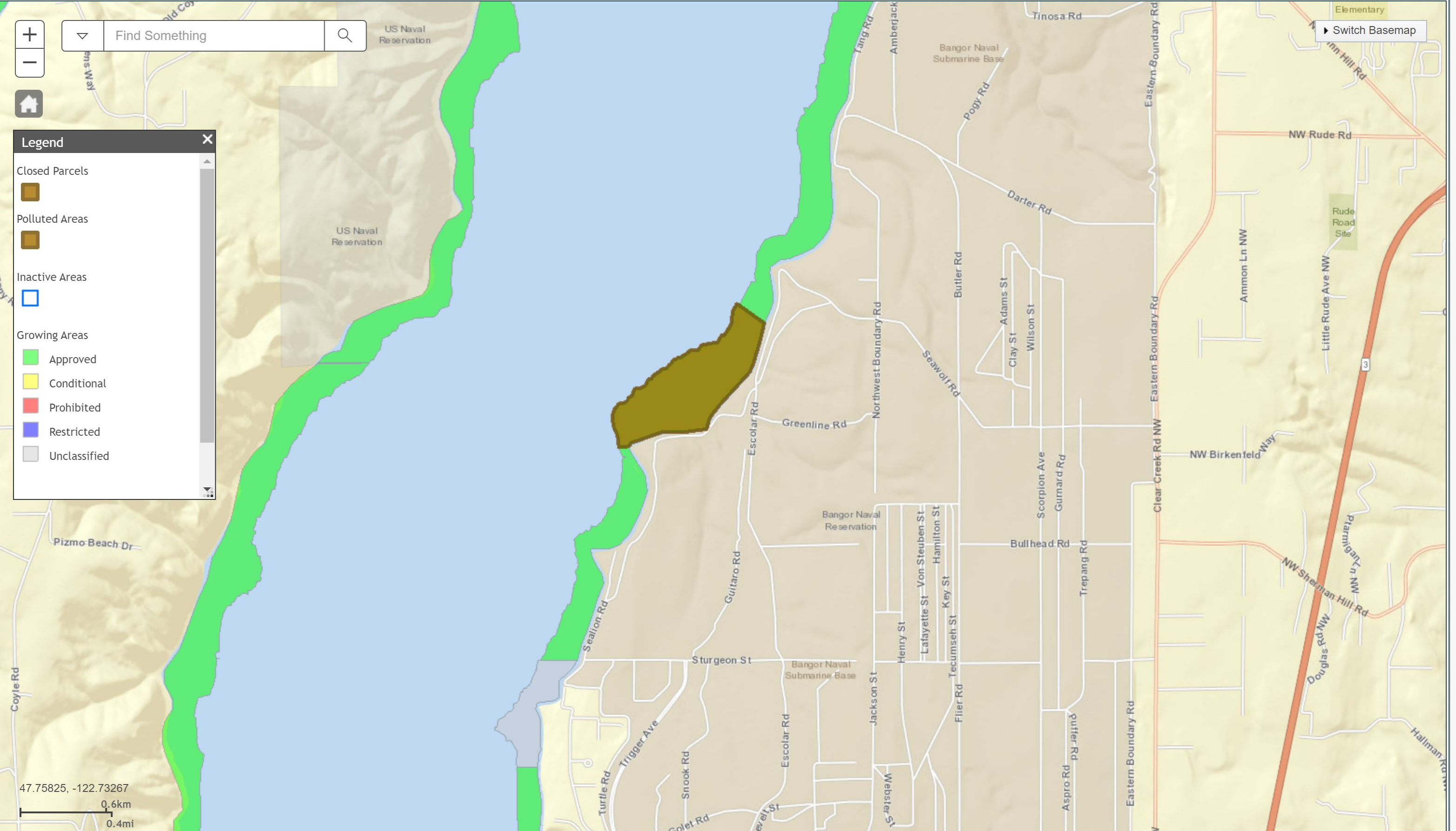
A handwritten signature in black ink that reads "Jane Steadman". The signature is fluid and cursive, with the first name "Jane" and last name "Steadman" clearly legible.

Jane Steadman
Kanji & Katzen, P.L.L.C.

Counsel for Port Gamble S'Klallam Tribe

⁴ Discharges at NBK-Bangor are of interest to the public and PGST members. For example, please see local news coverage regarding water quality issues at Bangor: <https://www.kitsapsun.com/story/news/local/2017/02/27/sewage-spill-closes-beaches-near-bangor/98505640/> (Feb. 27, 2017); <https://www.peninsuladailynews.com/news/beaches-appear-clean-after-bangor-naval-base-spill-of-oil-water-mixture-shellfish-harvest-still-suspended/> (Feb. 13, 2014). The attached screen shot also shows a shellfish closure at Devils' Hole Beach resulting from unpermitted sewage discharges from barges near Delta Pier at NBK-Bangor on currently unknown dates from mid-February 2023 to March 15, 2023. The Tribe holds treaty-reserved fishing rights and maintains an access agreement with the Navy at Devil's Hole Beach. Attachment (screenshot of closure taken on March 20, 2023, from <https://fortress.wa.gov/doh/oswpviewer/index.html>).

ATTACHMENT



Find Something

Legend

Closed Parcels

Polluted Areas

Inactive Areas

Growing Areas

- Approved
- Conditional
- Prohibited
- Restricted
- Unclassified

